

BILL ANALYSIS

C.S.H.B. 255
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

High fees make store valued cards depreciate in value over time and even become worthless due to unreasonable expiration dates. Consumers unknowingly do not receive the full face value of a stored value card. The fees and unused balances are kept by the issuer. If the card is lost, or the issuer goes out of business, the stored value card holder receives nothing. The National Retail Federation estimates \$17.24 billion worth of gift cards were sold during the 2004 holiday season, and is projected to grow up to \$68 billion in 2005. It is estimated that between 5 and 10% of the total value of the cards sold is never redeemed. In other words, in 2005 up to \$68 million worth of stored value cards will be abandoned and kept by card issuers.

The committee substitute for House Bill No. 255 prohibits issuers of stored value cards to decrease the value of a card, except for a maximum 50 cents per month charge after the first anniversary of the date the card is sold or issued. C.S.H.B. 255 establishes an expiration date of three years from the sold or issue date. Wage cards would have an expiration of one year. At the time of expiration, 100% of the unredeemed balance would escheat to the State of Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1 of the bill amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.42 which defines the following words or terms: "record", "stored value card" and "use". A stored value card includes a gift card and gift certificate.

Section 35.42 does not apply to a stored value card that: (1) is distributed by the issuer to a person under an awards, rewards, loyalty, or promotional program and not issued or reloaded in exchange for money tendered by the cardholder; (2) is sold below face value or donated to an employee of the seller or issuer, or a nonprofit or charitable organization, or to an educational institution, for fund-raising purposes; (3) is issued by a financial institution acting as a financial agent of the United States or of this state; (4) is issued as a prepaid calling card by a prepaid calling card company regulated under Section 55.253 of the Utilities Code; and, (5) issued by a federally insured financial institution, as defined by Section 201.101 of the Finance Code, for which the financial institution is primarily liable as the issuing principal.

A stored value card expires on the third anniversary of the date the card is sold or issued. If disclosed properly, the issuer of a stored value card may impose and collect a reasonable handling fee in connection with the issuance of or adding value to the card and a reasonable reissue or replacement charge if a lost or expired card is reissued or replaced. The issuer may impose or collect a periodic fee only if the fee does not exceed 50 cents a month, and it is not assessed until after the first anniversary of the date the card is sold or issued, and it is properly disclosed.

For proper disclosure, an expiration date or policy, fee, or other material restriction or contract term must be clearly and conspicuously disclosed to a person at the time the card is sold or issued. A disclosure must be legibly printed on the retail packaging or on a posted notice

accompanying the sales display. A disclosure regarding expiration or a periodic fee that reduces the unredeemed value of the stored value card must also be legibly printed on the card.

SECTION 2 of the bill amends Section 72.101(a), Property Code to include Section 72.1016. Section 72.101(a) of the Property Code states that personal property is presumed abandoned if, for longer than three years the existence and location of the owner of the property is unknown to the holder of the property, and according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 3 of the bill amends Subchapter B, Chapter 72, Property Code by adding Section 72.1016 to state that if the existence and location of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and unchanged value on the earlier of: (1) the third anniversary of the date the card was issued, or (2) the first anniversary of the latest of the date the card was issued, the date the card was last used, or the date on which value was last added to the card, if the card's value represents wages, as defined by Section 61.001 of the Labor Code.

A person who sells or issued a stored value card in this state shall obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card. In absence of an address record, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller. A fee cannot be charged after the card is presumed abandoned.

SECTION 4 of the bill amends Section 72.103, Property Code by adding Section 72.1016 and "stored value card". A holder of abandoned property shall preserve the property and not reduce the value of the property.

SECTION 5 of the bill amends Section 73.001 (a) (1), Property Code by adding to the definition of "account" the words: "or funds received by a depository in exchange for the purchase of a stored value card."

SECTION 6 of the bill provides that changes in law applies only to a stored value card sold or issued on or after the effective date of this Act. A stored value card sold or issued before the effective date of this Act is governed by the law in effect when the card was sold or issued, and the former law is continued in effect for that purpose.

SECTION 7 of the bill establishes its effective date.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF SUBSTITUTE

The substitute differs from the original in that the substitute uses the broader term "stored value card," which includes a gift card. The substitute outlines the types of stored value cards that do not fall under this bill. The substitute establishes an expiration date of three years from the date the card is sold or issued. At the time of expiration, the unredeemed balance is presumed abandoned, at which time the unredeemed balance would escheat to the State of Texas, as outlined in the Property Code. The substitute does allow the issuer to collect a periodic fee up to 50 cents per month on the unredeemed balance after the first anniversary of the date the card is sold or issued.